

Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 405-A: HOSPITAL AND HEALTH CARE PROVIDER
COOPERATION ACT HEADING: PL 2005, c. 670, §1 (new)

§1848. ATTORNEY GENERAL AUTHORITY

1. Investigative powers. The Attorney General, at any time after an application or letter of intent is filed under section 1844, subsection 2, may require by subpoena the attendance and testimony of witnesses and the production of documents in Kennebec County, or the county in which the applicants are located, for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in section 1844, subsection 5. All documents produced and testimony given to the Attorney General are confidential. The Attorney General may seek an order from the Superior Court compelling compliance with a subpoena issued under this section.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

2. Court action; time limits. The Attorney General may seek to enjoin the operation of a cooperative agreement for which an application for a certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in Superior Court. The Attorney General may file an action before or after the department acts on the application for a certificate; however, the action must be brought no later than 40 days following the department's approval of an application for a certificate of public advantage. After the filing of a court action under this subsection, the department may not take any further action under this chapter and the time periods specified for departmental action under section 1844, subsection 4 are tolled until the court action is dismissed by the Attorney General or the Superior Court orders the department to take further action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

3. Automatic stay. Upon the filing of a complaint in an action under subsection 2, the department's approval of a certificate of public advantage, if previously issued, must be stayed unless the court orders otherwise or until the action is concluded. The applicant for a certificate may apply to the Superior Court for relief from that stay. Relief may be granted only upon showing of compelling justification. The Attorney General may apply to the court for any temporary or preliminary relief to enjoin the implementation of the cooperative agreement pending final disposition of the case.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

4. Standard for adjudication. In an action brought under subsection 2, the applicants for a certificate of public advantage bear the burden of establishing by a preponderance of the evidence that, in accordance with section 1844, subsection 5, the likely benefits resulting from the cooperative agreement and any conditions proposed by the applicants outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Maine courts concerning unreasonable restraint of trade under 15 United States Code, Sections 1 and 2 and Title 10, sections 1101 and 1102.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

5. Ongoing evaluation of benefits. If, at any time following the 40-day period specified in subsection 2, the Attorney General determines that, as a result of changed circumstances or unanticipated circumstances, the benefits resulting from a certified cooperative agreement or a consent decree entered under subsection 9

do not outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the Attorney General may file suit in the Superior Court seeking to revoke the certificate of public advantage. The standard for adjudication for an action to revoke brought under this subsection is as follows.

A. Except as provided in paragraph B, in an action brought under this subsection, the Attorney General has the burden of establishing by a preponderance of the evidence that, as a result of changed circumstances or unanticipated circumstances, the benefits resulting from the cooperative agreement and the unavoidable costs of revoking the certificate are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement. For purposes of this paragraph, "unanticipated circumstances" includes the failure to realize anticipated benefits of the agreement or the realization of unanticipated anticompetitive effects from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. In an action brought under this subsection, if the Attorney General first establishes by a preponderance of the evidence that the department's certification was obtained as a result of material misrepresentation to the department or the Attorney General or as the result of coercion, threats or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of revoking the agreement outweigh the disadvantages attributable to any reduction in competition resulting from the agreement. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

6. Enforcement of conditions. Conditions and measures included in a certificate of public advantage may be enforced according to this subsection.

A. If the certificate holders in a cooperative agreement not involving a merger are not in substantial compliance with the conditions included in the certificate of public advantage under section 1844, subsection 5 or a consent decree entered under subsection 9 or with the conditions or measures added pursuant to additional supervisory activities under section 1845, subsection 3, the Attorney General may seek an order from the Superior Court compelling compliance with such conditions or measures or other appropriate equitable remedies. If the Superior Court grants such relief and that relief is not effective in securing compliance with the conditions or measures, the Superior Court may impose additional equitable remedies, including the exercise of civil contempt powers, or may revoke the certificate upon a determination that advantages to be gained by revoking the certificate outweigh the unavoidable costs resulting from a revocation of the certificate. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

B. If the certificate holders in a cooperative agreement involving a merger are not in substantial compliance with the conditions included in the certificate of public advantage under section 1844, subsection 5 or a consent decree entered under subsection 9 or with the conditions or measures added pursuant to additional supervisory activities under section 1845, subsection 3, the Attorney General may seek an order from the Superior Court compelling compliance with such conditions or measures. If the certificate holders to the merger fail to comply with any court order compelling compliance with such conditions or measures, the Superior Court may impose additional equitable remedies to secure compliance with its orders, including the exercise of civil contempt powers or appointment of a receiver. If these additional measures are not effective in securing compliance with the conditions or measures and the Superior Court determines that the advantages to be gained by divestiture outweigh the unavoidable costs of requiring divestiture, the Superior Court may revoke the certificate and order divestiture of assets. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

C. In an action brought under this subsection, the Attorney General has the burden of proving by a preponderance of the evidence the basis for any equitable remedies requested by the Attorney General and adopted by the Superior Court. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

[2005, c. 2, §16 (COR) .]

7. Effect of court action. After the filing of a court action under subsection 5 or 6, the department may not take any further action under this chapter until the court action is dismissed by the Attorney General or the Superior Court orders the department to take further action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

8. Fees and costs. If the Attorney General prevails in an action under this section, the Attorney General and the department are entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the investigation or litigation and reasonable attorney's fees, expert witness fees and court costs incurred in litigation.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

9. Resolution by consent decree. The Superior Court may resolve any action brought by the Attorney General under this chapter by entering an order with the consent of the parties. The consent decree may contain any conditions authorized by section 1844, subsection 5, paragraph C or conditions or measures authorized under section 1845, subsection 3. A consent decree under this subsection may not be filed with the Superior Court until 30 days after the filing of the application under section 1844, subsection 2. Upon the entry of such an order, the parties to the cooperative agreement have the protection specified in section 1849 and the cooperative agreement has the effectiveness specified in section 1849.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY

RR 2005, c. 2, §16 (COR). 2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF) .

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